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AUTHOR Worona, Jay
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ABSTRACT

Recent court decisions are described under the following headings: (1) requests by parents to have their children excused from parts of the curriculum that conflict with their religious beliefs; (2) requests by parents to have textbooks removed from the curriculum; (3) use of school facilities by outside religious groups; (4) benedictions and invocations; (5) mandated religious representation on school board advisory councils; (6) requests by parents for special education related services in parochial schools; and (7) must public education services be provided to individuals in an exclusively isolated religious environment? The seventh section, comprising half of religious environment. The seventh section, comprising half of the document, discusses what is called "the anatomy of a special problem in New York State." The case of "Grumet et al. v. State Education Department et al." concerns the Satmar Hasidim, an orthodox Jewish sect that makes social isolation a goal of the community, and the litigation that has developed in the sect's establishment of the Kiryas Joel Village School District and provision of special education and related services. The state supreme court has ruled that legislation establishing the school district violated both the federal and state constitutions' separation of church and state provisions. All parties to this action have been widely quoted as stating that they would continue to appeal this action until it reached the United States Supreme Court. (MLF)

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PUBLIC EDUCATION AND ISSUES OF CHURCH AND STATE

Outline by

JAY WORONA
GENERAL COUNSEL
New York State School Boards Association
Albany, New York

- to be presented at -
A Special Interest Clinic
of the
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-in-
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I. REQUESTS BY PARENTS TO HAVE THEIR CHILDREN EXCUSED FROM PARTS OF THE CURRICULUM WHICH CONFLICT WITH THEIR RELIGIOUS BELIEFS

1. Mozert v. Hawkins County Board of Education, 647 F. Supp. 1194 (E.D. Tenn. 1986), rev'd, 827 F.2d 1058 (6th Cir. 1987). The United States Court of Appeals for the Sixth Circuit reversed the decision of the United States District Court for the Eastern District of Tennessee which had ordered the Hawkins County School District to allow children who had religious objections to a certain basal reading series to be excused from, or "opt-out" of reading class whenever any of these books were taught. Under this "opt-out" plan, the students would go to a study hall or library during reading class and would study reading later at home with their parents.

The Court of Appeals held that parents and children could not successfully claim that their freedom to practice their religion had been violated by the school district's mandating that the children attend classes and be "exposed" to the basal reading series. The Court reasoned, in essence, that the right to practice one's religion is not burdened simply by mandating one to be exposed to ideas with which one disagrees.

II. REQUESTS BY PARENTS TO HAVE TEXTBOOKS REMOVED FROM THE CURRICULUM

1. Smith v. Board of School Commissioners of Mobile County, 655 F. Supp. 939 (S.D. Ala. 1987), rev'd, 827 F.2d 684 (11th Cir. 1987). The United States Court of Appeals for the Eleventh Circuit reversed the decision of the United States District Court for the Southern District of Alabama which had ordered Alabama's public

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schools to remove 44 history, social studies and home economics textbooks for use in Alabama's public schools because the Court found such books to teach the religion of "secular humanism."

On appeal, although the Court noted that some of the material in the contested books may in fact be offensive to the religion of those bringing the lawsuit, the State's purpose in instilling in Alabama public school children such values as independent thought, tolerance of diverse views, self-respect, maturity, self-reliance, and logical decision-making, outweighed any possible interference with the religious rights of those involved in the lawsuit. The Court noted that if school districts are precluded from including material in books that is offensive to any particular religious belief, "there would be very little that could be taught in the public schools."

III. USE OF SCHOOL FACILITIES BY OUTSIDE RELIGIOUS GROUPS

1. Travis v. Owego-Apalachin School District, (927 F.2d 688 (2d Cir. 1991). The United States Court of Appeals for the Second Circuit holds that a school district must permit a evangelical ministry access to its premises for the purpose of conducting an evangelical magical show because the Court found that the school district had permitted its premises to be used for a "religious purpose" on a prior occasion. Court fails to answer whether Education Law section 414, which sets forth the permissible uses of school district buildings, is constitutional.

2. Most recently in Lamb's Chapel v. Center Moriches Union Free School District, the United States Court of Appeals for the Second Circuit ruled that a school district could preclude a religious organization from acquiring access to school district premises after school hours for purposes of showing a religious film series.

In this case, an evangelical christian church and its pastor requested access to school district facilities during non school hours to show a series of religious films. The school district relied on section 414 of the New York State Education Law, as well as, a local rule to argue that the school district was precluded under such laws from permitting district facilities to be used for religious purposes. The church and it's pastor contended that the school district had created a "public forum" by policy and practice and therefore had to permit access to school facilities for this group as well. The church and it's pastor contended that the school district had unconstitutionally excluded this speech on the basis of it's religious content.

Subsequently, the church and it's pastor commenced a civil rights action against the school district in February 1990. At this time, they requested an order from the court permitting them

to use the auditorium of the high school or elementary school to show the film series and to allow religious groups use of the facilities without discrimination because of the religious content of their speech. Furthermore, they sought a judgement from the court declaring their right to use the facilities in question in accordance with constitutional protections guaranteed by the First and Fourteenth Amendments including the free speech, freedom of assembly, free exercise of religion, establishment of religion and equal protection clauses of the Constitution. They also requested a declaration from the Court that section 414 of the Education Law is unconstitutional to the extent that it bars the use of school district facilities for purposes of religious speech.

The lower court refused to grant the plaintiffs' request to compel, on a temporary basis, the school district to allow the use of its facility, finding that "the plaintiffs' had not shown either a substantial likelihood of success on the merits or sufficiently serious questions going to the merits." The plaintiff's brought an appeal to the United States Court of Appeals, for the Second Circuit based upon the lower courts denial of its request for this relief but later withdrew this appeal and the matter was returned the lower court for further proceedings.

The plaintiff's then brought a motion for summary judgement asking for the Court to determine that there were no issues of fact in dispute and that the plaintiffs should be successful in this action as a matter of law. The school district also requested summary judgement on it's behalf.

The United States District Court granted summary judgement for the school district, finding that "if the intended use of school facilities is not required or authorized by statute, there is no constitutional right to such use where a school district has not, by policy or practice, permitted a similar use in the past." Although it determined that the Center Moriches School District facilities where "limited public forums," meaning that the school district had permitted certain non school related uses of its premisses in the past, the court concluded that the "district had not by policy or practice opened it's doors to groups akin to Lamb's Chapel", and therefore held, "that the school district's denial of plaintiff's applications to show the film series was viewpoint-neutral and, hence, constitutional." The plaintiff's then appealed this action to the United States Court of Appeals, for the Second Circuit.

The appellate level federal court again found in the favor of the school district. In holding for the school district, the court found that the Center Moriches School District facilities did not fall in the category of "traditional public forums," like streets, parks and similar locals said to have immemorially been held in trust for the use of the public, in which, time out of mind, have been used for purposes of assembly, communicating thoughts between

citizens, and discussing public questions. Furthermore, the court did not find the Center Moriches Public School District premises to fall into the category of "non-public forums," i.e. property that is not open for communicative purposes either by tradition or designation and where governmental control is analogous to that of a private owner. The court did find that the Center Moriches school facilities fell into the category of "limited public forums," a classification which allows it to remain non public except as to specified uses.

The court found that section 414 of the New York State Education Law, which governs the purposes for which school house facilities may be utilized, does not contain religious uses as permitted purposes in its enumeration. The court set forth that, on a prior occasion in the case entitled, Deeper Life, a state court interpretation of section 414, that the use of New York's school facilities is confined to non-religious purposes, had been upheld. The court acknowledged that it had previously determined that, under the New York State statute, and applicable New York City Board of Education Regulations, the school board had no discretion with respect to the granting of use permits to religious groups. Nevertheless, the plaintiffs asserted that, once the school district facilities were opened as a "public forum" for one purpose, they were opened for all purposes and that if the court were to find that property remains a non-public forum as to all unspecified uses such as, in this case, religious uses, that the plaintiff's first amendment freedom rights would be violated.

The plaintiffs further argued that notwithstanding the exclusion in section 414 of the permitted use of school district premises for religious purposes, the school district had on a prior occasion opened up it's forum for religious purposes. Although the court acknowledged that if in fact the school district had previously permitted it's premisses to be used for religious purposes, it may not selectively deny access for other activities of that same religious purpose, the court did not find, in reviewing the record of this case, that the school district had in fact permitted it's premisses to be used in the past for religious purposes.

Specifically the court found that the school district, in permitting a Salvation Army band benefit concert, a gospel music concert and a lecture entitled "Psychology and the Unknown" had not permitted activities of a religious purposes. Rather, the court found that "incidental references to religion or religious figures, the occasional use of religious terms, and the performance of music with religious overtones, do not convert a secular program into a religious one." The court did not find the programs cited as examples ones which carried out religious themes or ones which were presented in a religious context. As a result the court concluded that the facilities were "limited public forums," not opened to religious uses by policy or practice and that there was no

constitutional violation in the failure of the school district to afford access to the plaintiffs.

The court further distinguished its decision from two United States Supreme Court cases which were relied on by the plaintiffs in support of their position. In Widmar v. Vincent the court held that a state university could not deny access of the university facilities to students who wish to conduct religious meetings on campus. The court distinguished the Widmar case, finding that Widmar involved the use of university property by student groups in a situation where a number of such groups were afforded access to the point where, as to the students, "a generally opened forum" was created.

Furthermore the court distinguished the case entitled, Board of Education of the Westside Community School v. Mergins relied upon by the plaintiffs. In Mergins the court held that the Equal Access Act prohibited a high school " from discriminating, based on the content of student speech, against students who wish to meet on school premisses during non instructional time." The court found that Mergins was distinguishable based on the fact that the religious use of school property was sought by students who have a greater claim on school property then outsiders, especially when the property is generally open to student groups. Furthermore the court distinguished Mergins, holding that the Supreme Court had permitted a student run bible study group access to school premisses after school hours based upon its right to do so under a federal statute. The court in Mergins did not decide whether the First Amendment requires the same result.

This case in most important in that it again restores the ability on the part of school district's to control their use of school district facilities but it cautions school districts to make sure that they are consistent when determining which categories of groups will be excluded from utilizing school district premises.

IV. BENEDICTIONS AND INVOCATIONS

1. Weisman v. Lee 908 F.2d 1090, cert. granted, 111 S.Ct. 1305 (1991) The United States Court of Appeals for the First Circuit affirms a lower Federal District Courts holding a district's practice unconstitutional of permitting a local rabbi to perform an invocation and benediction at the district's graduation ceremony because in his invocation and benediction, the rabbi invoked a deity. The United States Supreme Court will hear this case during its next term.

V. MANDATED RELIGIOUS REPRESENTATION ON SCHOOL BOARD ADVISORY COUNCILS

1. The New York State School Boards Association v. Thomas Sobol (New York State Court of Appeals decided March 31, 1992). New York State's highest court rules a New York State regulation does not violate the Establishment Clause of the First Amendment in its requiring that representatives from religious organizations be included on State-mandated AIDS advisory councils to be established by local boards of education for the purpose of making recommendations concerning the content, implementation and evaluation of AIDS instruction programs.

VI. REQUESTS BY PARENTS FOR SPECIAL EDUCATION RELATED SERVICES IN PAROCHIAL SCHOOLS

1. Goodall v. Stafford County School Board, (930 F.2d 363 (4th Cir. 1991). The United States Court of Appeals for the Fourth Circuits holds that the provision of a cued speech interpreter to a student attending parochial school violates the Establishment Clause because it would result in a publicly paid interpreter acting as a conduit for the child's religious training.

2. Zobrest v. Catalina Foothills School District, 1988-89 EHLR Dec. 441:564 (D. Ariz. 1989). On facts similar to those in Goodall, a federal district court in Arizona reached the same conclusion as the Fourth Circuit.

3. Board of Education of the Monroe-Woodbury CSD v. Wieder, 134 Misc.2d 658 (1987), aff'd as mod., 132 AD2d 409 (2d Dept 1987), aff'd as mod., 72 NY2d 174. The Satmar Hasidim community of the Village of Kiryas Joel in the Town of Monroe, Orange County, wanted special education and related services separate and apart from non-Satmar children, as required by Satmar religious beliefs. Prior to the U.S. Supreme Court decisions in Aguilar v. Felton, 473 U.S. 402 (1985) and School Dist. of the City of Grand Rapids v. Ball, 473 U.S. 373 (1985), the Monroe-Woodbury Central School District provided these services in an annex to the village's religious school. Following these decisions, Monroe-Woodbury determined that it could provide the services only at its own public school facilities.

Supreme Court, Orange County directed Monroe-Woodbury to provide the services at a location not physically or educationally identified with the Village, but nonetheless, reasonably accessible to the children. On appeal, the Appellate Division, Second Department, determined that the ordering of services at a "neutral site" by the Orange County Supreme Court violated the Establishment Clause because the site was not truly "neutral", as only Satmar children would be educated at said site. The Appellate Division further determined that the services could be provided only in the

regular classes and programs of the public schools, not separate from public school students.

On appeal, the New York Court of Appeals did not reach the constitutional issue. Instead, it rejected, on statutory grounds, both the position of Monroe-Woodbury that it could provide special education and related services only at its public school facilities and the position of the Satmar Hasidim that the services had to be provided within their village. However, in so ruling, the Court of Appeals observed that any alternate program fashioned to meet the educational needs of the disabled children of Kiryas Joel must conform with statutory guidelines and constitutional restraints.

VII. MUST PUBLIC EDUCATION SERVICES BE PROVIDED TO INDIVIDUALS IN AN EXCLUSIVELY ISOLATED RELIGIOUS ENVIRONMENT?

Anatomy of a Special Problem in New York State

Grumet et al. v State Education Department et al.

A. About the Satmar Hasidim

The Satmar are an orthodox jewish sect which represents one of the dynastic rabbinical sects of the Jewish Hasidic movement which rose in the 18th century in Eastern and Central Europe. The Satmarer trace their origins to a town of the same name in Hungary, now a part of Romania and called the Romanian translation of St. Mary's.

The term Hasidim literally means "pious ones". Hasidim believe in a literal interpretation of Scripture and the teachings of the Torah and the Talmud (the book of Jewish law and tradition) serve to guide every aspect of life from dress to diet. Central to Hasidic beliefs and way of life is the drawing of cultural boundaries between themselves and the rest of society. These boundaries are accentuated by their dress, the language they speak, and their system of education which focuses mostly on religious studies. They are admonished to keep every letter of the Torah lest the smallest divergence lead successive generations to further transgressions, and ultimately to the demise of Hasidim.

Satmar Hasidim, in particular, make social isolation a goal of the community. To avoid undesirable acculturation, the Satmarer separate themselves, and especially their children, from the outside community whose "hostile" or "impure" influences are deemed to pose a direct threat to their culture and insular existence. To protect themselves against undesirable acculturation, Satmar Hasidim, for instance, prevent their children from watching television. They also do not allow their children to attend school

with children who belong to cultures deemed undesirable for Satmarer. Parents' Assn. of P.S. 16 v. Quinones, 803 F2d 1235 (2d Cir. 1986)).

Hasidic sects, including the Satmar, are led by their own religious leader known as the Rebbeh, who is traditionally the most powerful and influential man in the Satmar community. The Rebbeh oversees almost every aspect of Hasidic life. For example, he reportedly gives Hasidic boys their first haircut, oversees education, and approves marriage agreements. Before Hasidim enter the work world, they must get approval from the Rebbeh.

Satmar Hasidim seldom resort to the American court system to resolve their disputes. Instead, they appear before their own rabbinical courts which settle community affairs in accordance with Satmar religious law.

Most Satmar in New York State, including the current Rebbeh, live in the South Williamsburg section of Brooklyn in New York City. Other Satmar population centers in New York include Borough Park, also in Brooklyn, Monsey in Rockland County, and the Village of Kiryas Joel in Monroe County. They live in an intensely communal, family-oriented way, centered around the Satmar synagogues and yeshivas.

B. About the Village of Kiryas Joel

The Village of Kiryas Joel is located in the Town of Monroe, Orange County. It is a community of Hasidic Jews of the Satmar sect, incorporated in 1977 and named after the late Satmar Grand Rebbeh Joel Teitelbaum. The Village's population of approximately 8,000 consists solely of Hasidic Jews.

As described in the New York State Court of Appeals case of Board of Education of the Monroe-Woodbury CSD v. Wieder (72 NY2d 174, 179), the Village is comprised of a culturally, ethnically and religiously isolated population. Yiddish is the principal language of its residents. Television, radio and English language publications are not in general use. The dress and appearance of Village residents are distinctive, with boys, for example, wearing long side curls, head coverings and special garments, and both males and females following a prescribed dress code. Signs posted throughout the village ask that visitors be sensitive to the religious sensibilities of the Satmarer.

In addition to separation from the outside community, reported in the case of Parents' Assn. of P.S. 16 v. Quinones (803 F2d 1235 (2d Cir. 1986)), Satmarer also observe separation of the sexes within the Village with few exceptions, such as within the confines of the immediate family. Such segregation of the sexes is practiced because "[p]rior to and outside of marriage, Satmar men and women are discouraged from looking at, or talking to each

other, for fear that it might produce 'impure thoughts' and may eventually lead to violation of the sexual code. Hence, males and females are segregated from early in life when young children of opposite gender are prohibited to play together."

C. Education of Satmar Hasidic Children

In accordance with their religious beliefs, education for Satmar children is different too. Satmarer want their schools "to serve primarily as a bastion against undesirable acculturation, as a training ground for Torah knowledge in the case of boys, and in the case of girls, as a place to gather knowledge they will need as adult women." Board of Education of the Monroe-Woodbury CSD v. Wieder, supra at 180, citing Rubin, Satmar: An Island in the City, at 140 [Quadrangle 1972]). Consequently, Satmar children attend private religiously affiliated schools.

In the Village of Kiryas Joel, the majority of boys are enrolled in the United Talmudic Academy (UTA) and girls attend Bais Rochel, a UTA affiliate. They are the only schools officially endorsed by the Satmar religious leadership.

The UTA and girls affiliate, Bais Rochel, are part of the Satmar educational system established by Reb Joel Teitelbaum to provide education to Satmar students in a manner that preserves in full Satmar culture in America. The Satmar educational system serves to further the goal of inculcating in Satmar children, the religious standards of their parents, a goal essential to the continued existence of the Satmarer. This system maintains separate schools for males and females in accordance with the tenets of Satmar religious beliefs prohibiting social interaction between the sexes. Education comes close to being an adjunct to religion.

Satmar schools provide boys with formal religious education and girls are taught the skills they will need to fulfill their role as women. Only in a very limited sense, do Satmar schools provide programs with any significant relationship to one's adult occupational role. Satmar religious schools provide "English" or secular educational programs only to the extent necessary to meet the minimum state requirements for qualifying as an approved school under the State's compulsory education laws. Male and female students are physically separated at all times, as required by Satmar religious beliefs.

In addition, textbooks are censored in advance, and the borrowing of public library books is forbidden because of their uncensored content. Nonacademic subjects such as art, music and physical education are absent from Satmar schools.

Although the majority of Kiryas Joel children attend the UTA and its affiliate school, over 150 attend the B'nai Joel school

located in Harriman. That school, named after the founder of the Village of Kiryas Joel (B'nai Joel means Children of Joel), was organized and established in 1988, after UTA school officials expelled the children of six Village families.

D. Prior litigation concerning special education and related services for the Satmar children of Kiryas Joel

The specific issue of whether the Satmar Hasidim of Kiryas Joel were entitled to obtain special education and related services in a manner which conforms with Satmar religious beliefs was previously litigated through the New York State judicial system in the case of Board of Education of the Monroe-Woodbury CSD v. Wieder (134 Misc.2d 658 (1987); 132 AD2d 409 (2d Dept. (1987); 72 NY2d 174 (1988)).

Prior to the establishment of the Kiryas Joel Village School District, appropriate educational services were available to any and all Village children from defendant Monroe-Woodbury. Specifically with respect to handicapped children, the Monroe-Woodbury Board and representatives from the Village had in 1984 negotiated an agreement for the provision of services and programs characterized as "health and welfare" services at a "neutral site" within the Village--actually an annex to Bais Rochel, the UTA affiliate. (72 NY2d 174, 180).

However, the Monroe-Woodbury Board terminated these services a year later when, responding to the United States Supreme Court decisions in Aguilar v. Felton (473 US 402 (1985)) and School Dist. of the City of Grand Rapids v. Ball (473 US 373 (1985)), it determined that it could furnish services to the Village handicapped children only in its public school facilities. The Monroe-Woodbury Board then proceeded to place the affected children in classes within its public schools, based on individual evaluations conducted by the Monroe-Woodbury Board's Committee on the Handicapped (COH). Initially, the Village's handicapped children attended the Monroe-Woodbury public schools but, after several months, their parents refused to permit them to continue attending such schools. (72 NY2d at 180).

Educational services for the handicapped children of the Village were always available from the Monroe-Woodbury Central School District. Furthermore, after services became available only in the public schools, Village children who actually attended the programs in the public school facilities continued to progress. (72 NY2d at 181). During subsequent judicial proceedings (Board of Education of the Monroe-Woodbury CSD v. Wieder, supra), the Monroe-Woodbury Board contended that it lacked statutory authority to provide services to the Village's handicapped children except within its regular public school classes. Parents of the affected children urged that services in the public school facilities with other non-Satmar children were inappropriate because of the panic,

fear and trauma their children suffered when leaving their own community and being with people whose ways were so different from theirs. (72 NY2d at 181). In response to these parental assertions, the Monroe-Woodbury Board presented evidence pointing to the progress made by the Satmar children who actually attended the public school programs. The Monroe-Woodbury Board further detailed the various efforts made to integrate the Satmar children into the public school environment and to accommodate the parents, including Yiddish-speaking aides and bilingual reports. (Id.)

In a separate case involving Chapter I programs for Satmar children in the Williamsburg section of Brooklyn in New York City, Satmar Hasidim had unsuccessfully argued that:

> [the Satmar Hasidim] struggle very hard to maintain [their] belief and [their] culture...[They] want [their] children separate. (Id.)
>
> [t]he issue [involved in Quinones] goes to the heart of the Orthodox tradition, which requires the separation of males and females for virtually every activity, including schooling, and encourages isolation from other cultures. If we have our kids learning with them, they'll be corrupted...We don't hate these people, but we don't like them. We want to be separate. It's intentional. (Id.) (Emphasis added). (Parents' Assn. of P.S. 16 v. Quinones, 803 F2d 1235 (2d Cir. 1986)).

Following the submission of a motion for summary judgment by both sides in the Wieder case, Supreme Court, Orange County, directed the Monroe-Woodbury Board to provide the affected Village children with necessary services at a location not physically or educationally identified with the Village but, nonetheless, reasonably accessible to the children. However, on appeal the Appellate Division determined, inter alia, that the ordering of services at a "neutral site" by the Orange County Supreme Court ran afoul of the Establishment Clause. The Appellate Division further determined that the Monroe-Woodbury Board could provide Village children with special education and related services only in the regular classes and programs of the public schools, not separate from public school students. (132 AD2d 414-16; 72 NY2d at 181-82).

An appeal of this case was subsequently brought to the New York State Court of Appeals, the state's highest court. Without basing its decision upon any constitutional principles, the Court of Appeals rejected both the Monroe-Woodbury Board's contention that it could provide services to the Village handicapped children only in its public schools, and the parents' contention that the services had to be provided within their own schools, in this case at the Village's religious schools, or even at a neutral site. (72 NY2d at 189-90). In so ruling, however, the Court of Appeals observed that any alternate program fashioned to meet the

educational needs of the handicapped children must conform with statutory guidelines and constitutional restraints. (72 NY2d at 186-87).

In addition, the Satmar Hasidim of Kiryas Joel had also been previously unsuccessful in securing only male drivers in runs servicing male Village students attending the parochial school, in accordance with their religious tenets restricting interaction between the sexes (Bollenbach v. Bd. of Educ. of the Monroe-Woodbury Central School Dist., 659 F.Supp 1450 (SDNY 1987)).

E. Establishment and formation of the Kiryas Joel Village School District

Subsequent to the Court of Appeals decision in Board of Education of the Monroe-Woodbury CSD v. Wieder, (72 NY2d 174 (1988)), pursuant to Chapter 748 of the Laws of 1989, and effective as of July 1, 1990, the New York State Legislature established a union free school district to be known as the Kiryas Joel Village School District. This separate school district is entirely located within the Village of Kiryas Joel. Reports and memoranda in the bill jacket indicate that the Kiryas Joel Village School District was established strictly for the purpose of providing educational and related services to the handicapped children of the Village. Furthermore, the non-handicapped student population was "expected to continue to attend private schooling currently provided in the Village, with any non-handicapped students desiring a public school program being 'tuitioned out' to the Monroe-Woodbury school district". However, the act itself attributes to the School District "all the powers and duties of a union free school district under the provisions of the education law". This enables the School District to, for instance, raise taxes and receive state aid to support its educational programs, offer dual enrollment services to the non-handicapped students of the Village, i.e., programs for the gifted and talented, and provide transportation services for all Village students attending private schools. (See, New York State Education Law, Sections 1709; 3602-c).

Reports and memoranda in the bill jacket, and newspaper accounts of the establishment of the School District also recount that the School District was established to resolve the conflicts arising from the desire of Village residents to educate their handicapped children apart from the other non-Satmar children of the Monroe-Woodbury School District because of religious and cultural differences. A newspaper article reporting on the establishment of the School District quotes Carl Onken, President of the Monroe-Woodbury Board, as stating that the Monroe-Woodbury District "supports the new district because of previous conflicts with the Hasidic village about educating the handicapped students. Village officials wanted their children educated separately from Monroe-Woodbury students because of their religious beliefs."

The Kiryas Joel Village School District became operative with the 1990-1991 school year. Even though, according to documentation contained in the contested act's bill jacket, the School District was established to provide services to the approximately one hundred handicapped students in the Village, as of October 29, 1990, only thirty-three pupils were enrolled in and receiving services from the School District. Moreover, twenty of these students were non-residents of the Village and all are Satmar Hasidim. Three were residents of defendant Monroe-Woodbury and seventeen were being bused from the East Ramapo Central School District in Rockland County. These non-resident handicapped children were being assigned to the Kiryas Joel Village, at least in part, based upon their religious and cultural affinity to the Satmar community. Religious and cultural affinity are being considered as factors for placement of these students despite the fact that the New York State Commissioner of Education has consistently held that the culture of students with handicapping conditions is not a relevant issue for determining their educational placement.

In the Kiryas Joel Village School District, there are no opportunities whatsoever for the handicapped children of the village to be placed in classes of the district with their nonhandicapped peers.

F. Litigation contesting the constitutionality of the legislation establishing the Kiryas Joel Village School District.

On January 19, 1990 an action was commenced by the New York State School Boards Association asserting that Chapter 748 of the Laws of 1989, establishing a separate school district in and for the Village of Kiryas Joel, Orange County with all the powers and duties of a union free school district under the provisions of the education law violates the Establishment Clause of the First Amendment to the United States Constitution and its New York State counterpart, Article XI section 3 to the New York State Constitution, both of which prescribe the separation of church and state.

On January 22, 1992, Justice Lawrence E. Kahn of the Albany County Supreme Court handed down a nine page decision (attached below) in which he held that the New York State Legislature violated all three prongs of the so-called Lemon test and that Legislation establishing the Kiryas Joel Village School District violated both the Federal and State Constitutions' separation of church and state provisions.

An appeal was filed by the Kiryas Joel Village School District on February 14, 1992 and by the Monroe-Woodbury Central School District on February 19, 1992. According to New York State Law, an automatic stay is established once such an appeal is filed which

would allow the Kiryas Joel Village School District to remain in effect until at least after the appeal process is completed. However, the New York State School Boards Association has filed a motion to vacate the stay. A decision from the Appellate Division, Third Department is pending.

All parties to this action have been widely quoted as stating that they would continue to appeal this action until such time as it reached the United States Supreme Court. It's resolution is crucial for a determination of what special education services children are entitled to receive under both state and federal law when in fact the separation of church and state has been violated.